

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 05-CV-10879-JLT

KIMBERLY GENEREUX,	)	
Plaintiff	)	
	)	
v.	)	<b>PLAINTIFF'S OPPOSITION TO</b>
	)	<b>DEFENDANT'S MOTION <i>IN LIMINE</i></b>
	)	<b>TO PRECLUDE THE USE OF</b>
COLUMBIA SUSSEX CORPORATION,	)	<b><u>REYNOLDS v. COLUMBIA SUSSEX</u></b>
STARWOOD HOTELS & RESORTS	)	
WORLDWIDE, INC., and	)	
WESTIN HOTEL MANAGEMENT, L.P.,	)	
Defendants	)	

Kimberly Genereux, the plaintiff, opposes the defendants' motion *in limine* to exclude use of evidence and testimony from the case of *Reynolds v. Westin Hotel Company, et. als.*, U.S.D.C. E.D. Ky. Case No. 97-77 (hereafter "*Reynolds*"), for the following reasons:

1. On the morning of his deposition, defendant Columbia Sussex Corporation's Fed. R. Civ. P. 30(b)(6) designee, Theodore Mitchel, produced a copy of the Complaint and two summonses from *Reynolds* and identified them as part of that defendant's response to the plaintiff's document requests.

2. The *Reynolds* Complaint alleged sexual assaults upon two teenage female guests of the Westin Casuarina.

3. During his deposition in the instant case, Mr. Mitchel identified *Reynolds* as a sexual assault case, Mitchel dep., p. 38, and testified that the only times he has testified as a Rule 30(b)(6) designee for Columbia Sussex in cases involving persons injured as a result of criminal assaults involving any Columbia

Sussex hotels was with respect to incidents occurring at the Westin Casuarina, including *Reynolds*. *Id.*, p. 4-8, 197-98.

4. Mr. Mitchel denied possession of copies of his deposition testimony from *Reynolds*. *Id.*, p. 13-14. Although he testified that the defendants might have other documents related to *Reynolds*, *Id.*, p. 200-203, no other documents ever were produced by the defendants.

5. The plaintiff subpoenaed copies of the *Reynolds* deposition transcripts for trial. They arrived during the pendency of the defendants' summary judgment motion in electronic format and were used to oppose the defendants' motion.

6. Mr. Mitchel's testimony from *Reynolds* is not hearsay but constitutes the prior statement of a witness, Fed. R. Evid. 801(d)(1), and where it contradicts Mitchel's testimony at bar is the admission of a party-opponent in a representative capacity. Fed. R. Evid. 801(d)(2)(A).

7. Mr. Mitchel's deposition testimony, and any other relevant documents from *Reynolds*, may be used at bar where relevant as admissions of defendant Columbia Sussex Corporation and/or to impeach witnesses. See e.g., Fed. R. Evid. 801(d)(1) and (2), 607, 613.

8. Evidence deriving from and/or related to *Reynolds* is relevant to the issue of foreseeability in the case at bar. *Reynolds* involved a prior sexual assault involving two minor

guests of the Westin Casuarina in which defendant Columbia Sussex was sued and settled.

9. The *Reynolds* evidence has been in the possession of the defendants for the past 11 years and, other than the Complaint, has not been produced to the plaintiffs. The defendants should not be heard to complain that they "have had little time to examine and respond to these documents". Motion *in Limine*, p. 3.

10. Ms. Genereux was not provided and was unable to obtain from PACER a copy of the Kentucky District Court protective order, which purports to have been appended to the defendants' Motion *in Limine* but which did not appear in the materials received by the plaintiff. The plaintiff assumes that as a non-party to the Kentucky litigation who obtained the transcripts properly by subpoena for the instant trial, she is not within the scope of the protective order. Moreover, the plaintiff did not name the minor victims of the sexual assaults in her summary judgment submissions and does not anticipate identifying them at trial.

WHEREFORE, the plaintiff respectfully requests that this Court deny the defendants' motion *in limine*.

The Plaintiff,  
By her Attorney,

\_\_\_\_\_  
MARK F. ITZKOWITZ (BBO #248130)  
85 Devonshire Street  
Suite 1000  
Boston, MA 02109-3504  
(617) 227-1848  
April 8, 2008

**CERTIFICATE OF SERVICE**

I, Mark F. Itzkowitz, counsel for the plaintiff, hereby certify that on this date, I made service of the within document by serving it electronically to registered ECF participants and/or by mailing/faxing/hand-delivering a copy of same to non-registered ECF participants as indicated on the Notice of Electronic Filing ("NEF"), upon the following counsel of record:

John B. Johnson, Esquire  
Corrigan, Johnson & Tutor, P.A.  
141 Tremont Street  
Boston, MA 02111; and

Robert J. Brown, Esquire  
Mendes & Mount, LLP  
750 7<sup>th</sup> Avenue  
New York, NY 10019-6829.

\_\_\_\_\_  
s/ Mark F. Itzkowitz  
MARK F. ITZKOWITZ (BBO #248130)

Dated: April 8, 2008

1 UNITED STATE DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS  
3 Civil Action NO. 05-CV-10879-JLT

4 KIMBERLY GENEREUX, )  
5 Plaintiff, )  
6 VS. )  
7 COLUMBIA SUSSEX CORPORATION, )  
8 ET AL, )  
9 Defendants. )  
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Deposition of THEODORE R. MITCHEL, a  
witness, was called on behalf of the Plaintiff as  
upon cross-examination, pursuant to the Rules of  
Civil Procedure, commencing at 9:30 a.m., on Friday,  
September 7, 2007, at the Sheraton Cincinnati, in the  
"A" Armstrong Room at 2826 Terminal Drive, Hebron,  
Kentucky, before Terence M. Holmes, professional  
court reporter, and notary public within and for the  
Commonwealth of Kentucky.

1 THEODORE R. MITCHEL  
2 of lawful age, a witness herein, being first duly  
3 sworn, as hereinafter certified, was examined and  
4 deposed as follows:

5 MR. ITZKOWITZ: What do you want to do  
6 on stipulations? Stand by us as reserve  
7 all objections, including motions to strike  
8 until the time of trial, except for  
9 objections related to privilege. And  
10 dispense with the -- waive the notary and  
11 waive the signing and let the witness read  
12 to sign, I would certainly want him to do  
13 that.

14 MR. BROWN: Yes.

15 MR. ITZKOWITZ: Okay.

16 MR. BROWN: Those are all acceptable  
17 to me.

18 MR. ITZKOWITZ: Great. Okay.

19 CROSS-EXAMINATION

20 BY MR. ITZKOWITZ:

21 Q. Can you tell us your full name, sir?

22 A. It's Theodore R. Mitchel.

23 Q. And what does the R stand for?

24 A. Robert.

25 Q. And, Mr. Mitchel, you've been

1 designated by Columbia Sussex to testify as their  
2 witness in response to a deposition for the person  
3 with the most knowledge of that corporation, is that  
4 correct?

5 A. Yes.

6 Q. Okay. Do you know how it was that you  
7 were designated, why you as opposed to other people?

8 A. I'm assuming it's in my position as  
9 secretary treasurer.

10 Q. Okay. Have you ever testified before  
11 for Columbia Sussex as a designated person under Rule  
12 30-B-6?

13 A. I don't know what 30-B-6 is, but I've  
14 testified before for Columbia Sussex, yes.

15 Q. Okay. In what types of cases have you  
16 testified?

17 A. Contract dispute cases, civil cases,  
18 you know, slip and fall cases, I've testified a  
19 number of times.

20 Q. On the civil cases that you mentioned,  
21 did any of them involve claims that people have --  
22 that somebody had been injured at the hotels as a  
23 result of a criminal incident?

24 MR. BROWN: At the Galleon Beach  
25 Hotel?

1 MR. ITZKOWITZ: No, at hotels in  
2 general that Columbia Sussex owns.

3 A. I believe I have, yes.

4 Q. Okay. Do you recall how many times  
5 you've testified in cases of that nature?

6 MR. BROWN: Let me just, for the  
7 record, 'cause I note that you said  
8 "Columbia Sussex owns," and for the record  
9 here, Columbia Sussex doesn't own the  
10 Galleon Beach property. And so I just want  
11 the witness to be clear that you've -- you  
12 know, you've asked him here that Columbia  
13 Sussex owns. I don't know --

14 MR. ITZKOWITZ: Let me rephrase the  
15 question. That's fine. I understand.

16 Q. Have you been designated to testify on  
17 behalf of Columbia Sussex in cases brought against  
18 Columbia Sussex Corporation relating to allegations  
19 that somebody was injured as a result of a criminal  
20 incident in a hotel that was either owned or operated  
21 or managed by Columbia Sussex?

22 MR. BROWN: Well I need -- you need to  
23 actually extend it that -- I think that  
24 when you limit to owned, managed or  
25 supervised that may be limiting in the

1 capacity as we have here where in Galleon  
2 Beach they didn't own, manage or supervise,  
3 but they were sued. And there was, as  
4 you know, through production of documents  
5 and administrative services agreement. So  
6 there may have been some services provided,  
7 but that they were not on site. And I  
8 think -- you know, I'm being careful as to  
9 how you're asking the question.

10 MR. ITZKOWITZ: Yeah. No, I  
11 appreciate that. I was actually concerned.  
12 I was gonna ask that as a follow-up after  
13 this one.

14 Q. But why don't we give it another shot  
15 and see if we can make your life easier.

16 A. All right.

17 Q. In those cases in which you were  
18 designated to testify where there had been  
19 allegations of a person being injured as a result of  
20 a criminal incident, what was the relationship  
21 between Columbia Sussex and the hotel that was being  
22 sued?

23 A. The only one that I can recall is the  
24 one where Columbia Sussex is the -- has an  
25 Administrative Services Agreement.

1 Q. Are you referring to this particular  
2 case, Ms. Genereux's case or to something different?

3 A. No, to the Reynolds' case.

4 Q. Okay. And before we get started this  
5 morning, we had received a copy of certain pleadings  
6 from that case. That's a case also involving the  
7 Westin Casuarina, is that correct?

8 A. Yes.

9 Q. Okay. So just to make sure that I'm  
10 following this correctly. You've been designated to  
11 testify on behalf of Columbia Sussex in two cases in  
12 which there were allegations of criminal -- of  
13 somebody being hurt as a result of a criminal  
14 incident, correct?

15 A. Correct.

16 Q. Okay. Both of those cases involve the  
17 Westin Casuarina?

18 A. Yes.

19 Q. Okay. You had mentioned earlier that  
20 you also had been designated to testify in civil  
21 cases and you mentioned specifically slip and fall  
22 cases. How many civil cases approximately have you  
23 been designated to testify in?

24 A. I really can't recall, I mean it's  
25 probably been somewhere around 10.

1 Q. Okay. And let me just sort of pick up  
2 on what Mr. Brown was suggesting and make sure that  
3 we got this right on the record. When you testified  
4 in the case involving Shaw Carpet, were you  
5 testifying on behalf of Columbia Sussex Corporation  
6 or on behalf of Galleon Beach Resort?

7 A. Galleon Beach Resort.

8 Q. Okay. Was Columbia Sussex a party to  
9 that case involving Shaw Carpet?

10 A. I don't recall.

11 Q. Do you remember which court that was  
12 in?

13 A. I believe it was -- I'd just be  
14 guessing, I really don't know.

15 Q. Was it a court in the United States or  
16 a court in the Cayman Islands?

17 A. It was a court in the United States.

18 Q. Okay. And do you know whether the  
19 case was in federal court or whether it was in state  
20 court?

21 A. I really don't know.

22 Q. Okay. Do you have copies of your  
23 testimony from any of the cases that we mentioned so  
24 far, the Kepner case, the Reynolds case or the Shaw  
25 case?

1           A.     I would guess that we don't, 'cause  
2     once a case is settled generally, you know, the  
3     records are destroyed after three years or so, but I  
4     couldn't say that with certainty.

5           Q.     Okay. And do you recall how long ago  
6     the Reynolds case was resolved?

7           A.     I'm guessing again, but I think it  
8     was, you know, the late '90s, '89, '98, or maybe in  
9     2000, somewhere in that time period.

10          Q.     Okay. And just to make sure that I'm  
11     right, that case, the Reynolds case settled?

12          A.     Yes.

13          Q.     Do you know what became of the Kepner  
14     case?

15          A.     I don't recall, I don't know if it's  
16     been settled yet or not.

17          Q.     Do you recall approximately how long  
18     ago you testified in it?

19          A.     On the Kepner case, that was some time  
20     early this year, I believe.

21          Q.     All right. All this was sort of a  
22     lead into what is obviously clearly, you're gonna  
23     know anyway, so I'll just toss it out there for your  
24     benefit. I represent the plaintiff in this case  
25     against Columbia Sussex, her name is Kimberly

1 I thought you were talking about the  
2 Reynolds case.

3 A. The Kepner case was a slip and fall.

4 Q. Oh, okay. All right. And the  
5 Reynolds case was an alleged sexual assault, you say?

6 A. Yes.

7 Q. Okay. And of course the case that  
8 brings us here today, the Genereux case, is an  
9 alleged sexual assault, correct?

10 A. Yes.

11 Q. Were there any other claims that you  
12 recall reviewing that involve alleged sexual  
13 assaults?

14 A. I don't remember any specifically, I'm  
15 sure there was. I mean I've been with the company  
16 for 18 years, I'm sure during that period of time we  
17 had another one somewhere.

18 Q. Do you recall any other hotels where  
19 there are alleged victim sexual assaults besides the  
20 Westin Casuarina?

21 A. I don't recall.

22 Q. Okay. Earlier you had mentioned that  
23 one of the reasons for, for reviewing claims was to  
24 determine if there were any areas that required  
25 corrective action, is that correct?

1           Q.    Earlier when we were talking about  
2   analyzing claims for various hotels that were  
3   operated or managed by the -- or owned by Columbia  
4   Sussex, we talked about some of the information that  
5   we gathered in the course of preparing analysis,  
6   would that information include information relating  
7   to crime levels in the area of the hotel?

8           A.    No, that would only -- that report is  
9   only -- would have been an analysis of the Incident  
10  Report.

11          Q.    Okay.  And other than putting that  
12  particular analysis aside, do you know of any other  
13  folks at Columbia Sussex that analyze crime levels in  
14  the vicinities of Columbia Sussex or the managed  
15  hotels for any purpose?

16          A.    No.

17          Q.    After the incident with Ms. Genereux,  
18  did you come to learn of any, any other incident  
19  involving alleged criminal acts at the Westin  
20  Casuarina?

21          A.    Other than the one I had already  
22  mentioned, the Reynolds case, which happened years  
23  before that.  Wasn't aware of anything else.

24          Q.    Okay.  And we talked earlier about the  
25  two, two other cases at the Casuarina that gave rise

1 to litigation, Kepner slip and fall, and the  
2 Reynolds' sexual assault. Other than matters that  
3 are in litigation, are you aware of any other reports  
4 of, of the incidents involving personal injuries at  
5 the Westin Casuarina that arose out of alleged  
6 criminal acts?

7 A. No.

8 Q. Okay. And that's neither before nor  
9 after the incident with Ms. Genereux, is that  
10 correct?

11 A. That's correct.

12 Q. Have you personally prepared any  
13 reports in connection with the Genereux incident?

14 A. No.

15 Q. And other than the document that we've  
16 discussed that you had reviewed, have you seen any  
17 other reports relating to Ms. Genereux's incident  
18 other than the documents you may have received from  
19 counsel?

20 A. No.

21 Q. Have you ever had any discussions with  
22 Mr. Yung about the Genereux incident?

23 A. I believe I told him about it and that  
24 we didn't have, you know, report at the time of the  
25 incident, but that's the extent of it. I don't

1 operational practices at Westin hotels.

2 In the course of your work for  
3 Columbia Sussex, have you had occasion to review any  
4 of those manuals?

5 A. I've reviewed selected pages, and then  
6 certain circumstances I don't recall what sections I  
7 had reviewed, but I know they exist, and I have over  
8 the years probably seen, if not Westin manuals,  
9 Marriott manuals or Holiday Inn manuals, and I have  
10 seen 'em. I don't know and haven't reviewed a total  
11 of them to know all the areas that they address.

12 Q. Have you had any responsibilities  
13 personally with respect to enforcing any aspects of  
14 those manuals?

15 A. No, I have not.

16 Q. And have you ever had any involvement  
17 in reviewing the Westin manuals that they  
18 specifically related to the Westin Casuarina?

19 A. No.

20 MR. ITZKOWITZ: Could we go off for a  
21 second?

22 (Off the record.)

23 (United States District Court, Summons in a  
24 Civil Case, 5-22-97, marked for  
identification as Mitchel Exhibit 11.)

25 Q. Mr. Mitchel, we just handed you what

1 we've marked as Exhibit 11. This is a copy of a  
2 couple of summons and complaints in a federal case in  
3 the U.S. District Court, the Eastern District of  
4 Kentucky brought by Leslie Reynolds. Are you  
5 familiar with this document?

6 A. I have seen it a long time ago. I'm  
7 not familiar with it specifically.

8 Q. Okay. We've been making reference  
9 throughout the deposition today to an incident  
10 allegedly involving sexual assault involving  
11 Ms. Reynolds. Is this the complaint that was brought  
12 in the case arising out of that incident?

13 A. Yes.

14 Q. Are there any other documents that you  
15 have at Columbia Sussex relating to this incident?

16 A. I believe we do have other documents  
17 relating to this case, yes.

18 Q. Do you know what documents you have?

19 A. I don't know.

20 Q. Do you know whether you have any of  
21 the Incident Reports relating to the incident which  
22 gave rise to the Reynolds case?

23 A. We did at one time, whether we still  
24 have 'em or not, I don't know.

25 Q. And as I understood what we had talked

1 about earlier, I can't remember if we discussed it on  
2 the record, the Reynolds case was settled?

3 A. Yes.

4 Q. Do you know what the terms of the  
5 settlement were?

6 A. My recollection is -- now I know that  
7 the settlement was \$175,000.00.

8 MR. ITZKOWITZ: Okay. Why don't we go  
9 off the record for a minute.

10 (Off the record)

11 (Photographs, marked for identification as  
12 Mitchel 12 through 16.)

13 Q. Let me just ask you a couple of  
14 questions before we get to the photos. In the course  
15 of this litigation we had received answers to  
16 interrogatories from Columbia Sussex, and there was a  
17 question asked that related to criminal incident  
18 reports occurring at the Westin Casuarina. The  
19 answer had been that the, that the defendant was not  
20 in possession of any reports for a incident at the  
21 Westin Casuarina. And I know this morning you had  
22 provided the complaint in the Reynolds case. And I  
23 think it was after this thing had actually been  
24 answered that we got the RCIP Report relating to  
25 Genereux, I think we marked it in the deposition a  
little bit earlier.

1 Do you know whether there were any  
2 other reports of criminal incidents at the Westin  
3 Casuarina that Columbia Sussex would have copies of  
4 besides these two, the Reynolds' complaint and the --

5 A. I'm not aware of any.

6 Q. Do you know whether, for example,  
7 Columbia Sussex has copies of the criminal Incident  
8 Reports dealing with the Reynolds' incident?

9 A. That might be in that file that has  
10 the other documents related to that case, but I don't  
11 know for a fact if it's in there or not.

12 Q. Okay. We've gone over it in some  
13 detail, the Safety & Loss Prevention Manual, the  
14 Safety & Security Manual from Columbia Sussex had  
15 been provided to the Casuarina that you instructed  
16 them to follow. And we had talked about some of the  
17 Westin, Westin manuals. There's a couple of quotes  
18 out of one of the Westin manuals. I didn't see  
19 identical language and I don't remember identical  
20 language from the Columbia Sussex manual. I don't  
21 want to drag you through the whole thing again  
22 hunting for it, but there's -- I just want to see  
23 whether or not from the perspective of Columbia  
24 Sussex and the perspective of the Westin Casuarina  
25 you would agree with these provisions that the Westin